

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## **RULE 801**

### **General**

Notwithstanding Rule 501, this regulation shall apply to all hearings on orders for abatement before the Hearing Board of the Antelope Valley Air Pollution Control District.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## **RULE 802**

### **Order For Abatement**

In accordance with Health and Safety Code Section 42451, the Hearing Board, when petitioned as provided herein, is authorized and directed to notice and hold hearings for the purpose of issuing orders for abatement. The Hearing Board, in holding hearings on the issuance of orders for abatement, shall have all powers and duties conferred upon it by Health and Safety Code Division 26.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(32)(iv)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(32)(iv)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## **RULE 803**

### **Filing Petitions**

Requests by the Air Pollution Control Officer (APCO) for a hearing on an order for abatement shall be initiated by the filing of the original and eight copies of the petition with the Clerk of the Hearing Board. One copy of the petition will then be served upon the person against whom the order for abatement is sought (the respondent). Service may be made in person or by mail, and service may be proved by written acknowledgment of the person served or by the affidavit of the person making the service.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

## RULE 804

### Content Of Petition

The petition for order for abatement shall contain the following information:

- (a) The name, address, and telephone number of the respondent.
- (b) The type of business or activity involved and the street address at which it is conducted.
- (c) A brief description of the article, machine, equipment, or other contrivance, if any, involved in the violative emission.
- (d) The section or rule which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violation.

The permit status and history of the source sought to be abated may be included in the petition. A proposed order for abatement may also be included.

All petitions shall be typewritten, double-spaced, on letter-size paper (8 1/2 inches by 11 inches), on one side of the paper only, leaving a margin of at least two and one-half inches at the top and one inch at each side of the paper.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

## RULE 805

### Scope Of Order

An order for abatement issued by the Hearing Board shall include an order to comply with the statute or rule being violated. Such order may provide for installation of control equipment and for a schedule of completion and compliance. As an alternative to an order to comply, the Hearing Board may order the shutdown of any source of emissions which violates any statute or rule. An order for abatement may also include a directive to take other action determined appropriate to accomplish the necessary abatement.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(32)(iv)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(32)(iv)(A)]

## RULE 806

### Findings

- (a) No order for abatement shall be granted unless the Hearing Board makes all of the following findings:
- (1) That the respondent is in violation of Section 41700 or 41701, Health and Safety Code, or of any rule or regulation of the Antelope Valley Air Pollution Control District Hearing Board.
  - (2) That the order of abatement will not constitute a taking of property without due process of law.
  - (3) That if the order of abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.
- (b) As an alternative to paragraph (a) above, the Hearing Board may issue an order for abatement pursuant to the stipulation of the APCO and the person or persons accused of violating Section 41700 or 41701, or any order, rule, or regulation prohibiting the discharge of air contaminants into the air, upon the terms and conditions set forth in the stipulation, without making the findings required under paragraph (a), above. The Hearing Board shall, however, include a written explanation of its action in the order for abatement.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(32)(iv)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(32)(iv)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## RULE 807

### Pleadings

Any person may file a written answer, other responsive pleading, memorandum, or brief not less than five days before the hearing. Said documents shall be served the same as petitions under Rule 803.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

## RULE 808

### Evidence

- (a) Oral evidence shall be taken only on oath or affirmation.
- (b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
- (d) The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to a matter under consideration. Interested persons may attend and submit oral or written statements (the original plus 8 copies) at the hearing; however, it is desirable that written statements be submitted to the Hearing Board five days before the hearing. Statements need not conform to formal rules of evidence, nor with subsections (a), (b), or (c) of this rule. The chairman may impose reasonable limits on the duration of oral presentations.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## **RULE 809**

### **Failure To Comply With Rules**

The Clerk of the Hearing Board shall not accept for filing any petition which does not comply with these Rules relating to the form, filing, and service of petitions unless the chairman or any three members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The chairman or any three members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## **RULE 810**

### **Dismissal Of Petition**

The APCO may dismiss his petition at any time before submission of the case to the Hearing Board without a hearing or meeting of the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons of such dismissal.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

(Adopted: 8/1/1975; Amended: 10/21/1997)

## **RULE 811**

### **Place Of Hearing**

All hearings shall be held at the location as determined in Rule 509.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## **RULE 812**

### **Notice Of Hearing**

The Clerk of the Hearing Board shall mail or deliver a Notice of Hearing to the respondent and to any person entitled to notice under applicable provisions of Division 26 of the Health and Safety Code.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(32)(iv)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(32)(iv)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## **RULE 813**

### **Preliminary Matters**

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the chairman or any three members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## **RULE 814**

### **Official Notice**

The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this State.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## RULE 815

### Continuance

The Chairman or any three members of the Hearing Board shall grant a continuance of 15 days or less, concurred in by the respondent, the APCO, and by every person who has filed an answer or other pleading in the action and may grant any reasonable continuance; in either case such action may be ex parte, without a meeting of the Hearing Board and without prior notice.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## RULE 816

### Order And Decision

The decision shall be reduced to writing, served and filed within 30 days after submission of cause by the parties thereto and shall contain a brief statement of facts found to be true, the determination of the issues presented, and the order of the Hearing Board. A copy shall be mailed or delivered to the APCO, the respondent, and to every person who has filed an answer or other pleading or who has applied as a party in person or by counsel at the hearing.

[SIP: Deletion challenged U.S. 9<sup>th</sup> Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(32)(iv)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220 (c)(32)(iv)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## RULE 817

### Effective Date Of Decision

Unless otherwise ordered, the decision of the Hearing Board shall become effective upon the concurring vote of three or more of its members.

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